

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,

Case No.: 2:14-cr-00004-JAD-VCF

Plaintiff

**Order Granting Motion to Reconsider,  
 Vacating Order, and  
 and Directing Further Briefing**

v.

Lanalsikov Lowe,

[ECF No. 329]

Defendant

Lamalsikou Lowe<sup>1</sup> is serving an 87-month federal prison sentence after a jury found him guilty of being a felon in possession of a firearm and possessing cocaine with intent to distribute and the Ninth Circuit affirmed.<sup>2</sup> In a one-page motion, Lowe moved under 28 U.S.C. § 2255 to vacate his conviction for being a felon in possession of a firearm under the Supreme Court's recent decision in *Rehaif v. United States*.<sup>3</sup> I denied that motion without requesting government response because I found that the files and records of this case conclusively show that he is entitled to no such relief.<sup>4</sup>

Lowe's counsel now points out in a motion for relief from judgment that I entered that ruling prematurely and while the court was waiting for his counsel to consult with Lowe about his pro se motion.<sup>5</sup> Counsel asks me to set aside that ruling and allow him to supplement Lowe's pro se arguments before making the decision on § 2255 relief.<sup>6</sup> The government responds that it

---

<sup>1</sup> The spelling of Lowe's name in the caption is error.

<sup>2</sup> ECF Nos. 271; 285.

<sup>3</sup> *Rehaif v. United States*, 139 S. Ct. 2191 (2019).

<sup>4</sup> ECF Nos. 327, 328.

<sup>5</sup> ECF No. 329.

<sup>6</sup> *Id.*

1 has no objection to allowing the supplementation, and it argues that my order resolving Lowe's  
2 pro se motion was erroneous in another way: this Court lacked the authority to reach the merits  
3 because the motion constitutes an unauthorized second and successive petition.<sup>7</sup>

4 Because I prematurely denied the motion without waiting for a supplemental filing from  
5 counsel, IT IS HEREBY ORDERED that the motion for reconsideration [ECF No. 329] is  
6 **GRANTED.**<sup>8</sup>

7 IT IS FURTHER ORDERED that the Order Denying Motion to Vacate Sentence and  
8 resulting judgment [ECF Nos. 327 & 328] are **VACATED and SET ASIDE**, and the Motion to  
9 Vacate Sentence under 28 U.S.C. 2255 [ECF No. 319] is **REINSTATED**.

10 IT IS FURTHER ORDERED that counsel for defendant has until June 15, 2020, to file a  
11 supplement to Lowe's pro se motion [ECF No. 319]. The government will have until July 15,  
12 2020, to file a response to the supplemented motion. Counsel for defendant will then have until  
13 July 31, 2020, to file a reply. No further briefing on this issue will be entertained.

14 Dated: June 5, 2020

15   
16 U.S. District Judge Jennifer A. Dorsey  
17  
18  
19  
20  
21  
22

23 <sup>7</sup> ECF No. 330.

<sup>8</sup> By this order, I take no position on the merits of the government's arguments.